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Attorneys for Defendant Western National
Assurance Company

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
MEDFORD DIVISION

KJARRY LLC,

Plaintiff,

v.

WESTERN NATIONAL ASSURANCE
COMPANY,

Defendant.

Civil No.: _____

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that pursuant to 28 U.S.C. § 1332, 28 U.S.C. § 1441(b), and 28 U.S.C. § 1446, defendant Western National Assurance Company files its Notice of Removal on the following grounds:

1. Defendant is named in a civil action filed in the Circuit Court for the State of Oregon, for the County of Jackson, entitled *KJARRY, LLC v. Western National Assurance Company*, Case No. 16CV39237. Defendant is a Washington corporation.

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NOTICE OF REMOVAL

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2. The state court action commenced when plaintiff's Complaint was filed with the Court Clerk of Jackson County, Oregon, on or about November 23, 2016. Defendant received notice from its registered agent that the Summons and Complaint were served on December 30, 2016. This Removal petition is timely, in that it is being filed within 30 days of the filing and service of the Summons and Complaint.

3. The following pleadings constitute all of the process, pleadings, and orders received by defendant in this action to date: Summons and Complaint and Proof of Service on Western National Assurance Company—true copies are attached as Exhibit A.

4. The controversy between plaintiff and defendant is a controversy between businesses that are incorporated in different states with their principal place of business in different states. Plaintiff KJARRY, LLC is an Oregon limited liability company, whereas Defendant Western National Assurance Company is a Washington corporation.

5. The above-entitled action is a civil action alleging breach of contract sustained by plaintiff due to property damage and business income losses resulting from the damage, which occurred during the policy period of Western National Assurance Company policy number CPP 107268201, effective April 2, 2014 through April 2, 2015. In this action, plaintiff seeks an award of economic damages in the amount of \$190,541.39, and attorney fees and costs.

6. The amount in controversy in this matter exceeds \$75,000, exclusive of interests and costs, and is one where complete diversity exists between plaintiff and defendant.

7. This is a civil action over which this Court has original jurisdiction pursuant to

28 U.S.C. § 1446(b).

8. Defendant is currently filing a Notice to state court of Removal to Federal Court with the Clerk of the Jackson County Circuit Court in accordance with 28 U.S.C. § 1446(d).

DATED: January 19, 2017

BULLIVANT HOUSER BAILEY PC

By /s/ Matthew E. Hedberg
Matthew E. Hedberg, OSB #081958
Telephone: 503.228.6351
Attorneys for Defendant Western National
Assurance Company

4826-9178-5792.1 10156/00012

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2
3
4 IN THE CIRCUIT COURT OF THE STATE OF OREGON
5 FOR THE COUNTY OF JACKSON
6

7 KJARRY LLC,

8 Plaintiff,

9 v.

10 WESTERN NATIONAL ASSURANCE
11 COMPANY,

12 Defendant.
13
14
15

Case No.

COMPLAINT

**(Breach of Contract; Declaratory
Judgment)**

**CLAIM NOT SUBJECT TO
MANDATORY ARBITRATION**
(Jury Trial Demanded)

Damage Prayer: \$190,541.39

Fee Authority: ORS 21.160(1)(c)

16 Plaintiff KJARRY, LLC alleges as follows:

17 **GENERAL ALLEGATIONS**

18 1.

19 Plaintiff KJARRY LLC ("KJARRY") is an Oregon limited liability company.

20 2.

21 At all material times, KJARRY was the owner of the Super 8 motel located at 4999
22 Biddle Road in Central Point, Jackson County, Oregon (the "Motel").

23 3.

24 On information and belief, at all material times Defendant Western National Assurance
25 Company ("Western National") was and is a Washington insurance corporation, licensed and
26 authorized to issue insurance policies in the state of Oregon.

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KILMER, VOORHEES & LAURICK, P.C.
A PROFESSIONAL CORPORATION
732 N.W. 19TH AVENUE
PORTLAND, OREGON 97209-1302
(503) 224-0055 • FAX (503) 222-5290

1 **FACTUAL ALLEGATIONS**

2 4.

3 KJARRY purchased various commercial insurance coverage and policies from Western
4 National for the period running from April 2, 2014 through April 2, 2015, including a
5 Commercial Property insurance policy, policy number CPP 1072682 01, (hereinafter “Property
6 Policy”). Among other coverages provided, the Property Policy included equipment breakdown
7 coverage, and business income coverage.

8 5.

9 On information and belief, on or about November 27, 2014, the dehumidification
10 system and pool equipment for the indoor swimming pool at the Motel was damaged as a result
11 of a covered occurrence (the “Accident”).

12 6.

13 Thereafter, for a period of less than two weeks, the Motel’s pool building and its related
14 equipment and mechanical components were inundated, overcome, and damaged by humidity
15 and condensation. On information and belief, this humidity and condensation was caused by the
16 breakdown of and/or damage to motorized dehumidification dampers that control the fresh and
17 exhaust air, which were stuck in the closed position, as well as damage to other pool building
18 equipment and mechanical components, all of which directly resulted from the Accident.

19 7.

20 As a direct and proximate result of the Accident, KJARRY was forced to close the pool,
21 and conduct extensive repairs to covered property. The closure and repairs lasted in excess of
22 three months, during which time KJARRY suffered significant losses of business income,
23 including loss of Motel pool facility and room rentals.

24 8.

25 KJARRY submitted a claim for losses and damages resulting from the Accident to
26 Western National, which was acknowledged by Western National by letter dated December 5,

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2014. Subsequent claim documentation was submitted to Western National as requested and/or required. Thereafter, Western National accepted the failure of the pool area motorized dampers as a “covered occurrence” under the policy by letter dated April 14, 2015, but “disclaim[ed] any and all costs incurred as a result of this occurrence.” Western National again declined making payment for losses and damages resulting from the Accident by letter dated July 21, 2015.

FIRST CLAIM FOR RELIEF

(Breach of Contract)

9.

KJARRY re-alleges and incorporates paragraphs 1 through 8 above.

10.

Under the Property Policy, Western National had a contractual obligation to pay KJARRY for damage to the Motel, and for its business income losses resulting from the damage to the Motel, up to the available limits of insurance.

11.

Western National breached its contractual obligation when it wrongfully denied its obligation to pay KJARRY for covered damages under the Property Policy.

12.

KJARRY has performed and fulfilled all necessary obligations and conditions precedent under the Property Policy.

13.

As a direct and proximate cause of Western National’s breach of its contractual obligations, KJARRY has incurred damages in an amount to be proven at trial, but currently estimated at \$190,541.39, in the form of:

a. Repair, replacement, remediation, inspection, testing, and mitigation costs

(\$69,066.83); and

b. Loss of business income (\$121,474.56).

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14.

KJARRY is entitled to its attorney fees pursuant to ORS 742.061.

SECOND CLAIM FOR RELIEF

(Declaratory Judgment)

15.

KJARRY re-alleges and incorporates paragraphs 1 through 14 above.

16.

Under the Property Policy, Western National has a contractual obligation to pay KJARRY for damage to the Motel, and for its business income losses resulting from the damage to the Motel, up to the available limits of insurance.

17.

Western National has denied any obligation to pay KJARRY for damage to the Motel, and for and for its business income losses resulting from this damage.

18.

There exists a real and substantial dispute between KJARRY and Western National regarding Western National's obligations to pay KJARRY for damage to the Motel, and for and for its business income losses resulting from this damage.

19.

KJARRY is entitled to a judicial declaration that Western National is legally obligated to pay KJARRY for all costs to repair the damage to the Motel, and for its business income losses resulting from the damage to the Motel, up to the available limits of insurance.

20.

KJARRY is entitled to its attorney fees pursuant to ORS 742.061.

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1 **PRAYER**

2 WHEREFORE, KJARRY prays for Judgment in its favor and against Western National
3 as follows:

- 4 a. On KJARRY's First Claim for Relief (Breach of Contract), for damages in
5 an amount to be proved at trial, but currently estimated at \$190,541.39,
6 plus an award of its attorney fees and costs incurred in prosecuting this
7 action;
- 8 b. On KJARRY's Second Claim for Relief (Declaratory Judgment), for a
9 judicial declaration that Western National is obligated to pay KJARRY for
10 all costs to repair the damage to the Motel, and for its business income
11 losses resulting from the damage to the Motel, up to the available limits of
12 insurance;
- 13 c. For an award of KJARRY's attorney fees, costs, and disbursements
14 pursuant to ORS 742.061;
- 15 d. For pre-and post-judgment interest at a rate of 9% per annum; and
16 e. For any further relief the Court deems just and equitable.

17 DATED this 23rd day of November, 2016.

18 KILMER, VOORHEES & LAURICK, P.C.

19
20 /s/ J. Lee Street

Peter J. Viteznik, OSB No. 944540

21 pviteznik@kilmerlaw.com

J. Lee Street, OSB No. 983965

22 lstreet@kilmerlaw.com

23 Phone No.: 503-224-0055

Fax No.: 503-222-5290

24 Of Attorneys for Plaintiff

Trial Attorney: Peter J. Viteznik

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CERTIFICATE OF SERVICE

I certify that on this ____ day of _____, 2016 the foregoing *** was served on the following by ☐ hand delivery ☐ overnight delivery ☐ fax ☐ OJD eFiling using Odyssey File & Serve ☐ email ☐ mailing by depositing with the U.S. mail in Portland, Oregon, enclosed in a sealed envelope with first class postage prepaid. Addressed as follows:

Peter J. Vitezniak, OSB No. 944540
J. Lee Street, OSB No. 983965
Of Attorneys for Plaintiff

1/19/2017 3:01:16 PM
16CV39237**AFFIDAVIT OF SERVICE**

State of Oregon

County of Jackson

Circuit Court

Case Number: 16CV39237

Plaintiff:

KJARRY , LLC.

vs.

Defendant:

WESTER NATIONAL ASSURANCE COMPANY

For:

Kilmer Voorhees & Laurick

732 N.W. 19th Ave.

Portland, OR 97209-1302

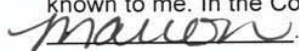
Received by Barrister Support Service on the 30th day of December, 2016 at 1:06 pm to be served on **WESTERN NATIONAL ASSURANCE COMPANY R/A: CT CORPORATION SYSTEM, 388 STATE ST., # 420, SALEM, OR 97301.**

I, Alice McAllister, being duly sworn, depose and say that on the **30th day of December, 2016 at 1:45 pm,** I:

SERVED the within named **WESTERN NATIONAL ASSURANCE COMPANY R/A: CT CORPORATION SYSTEM at 388 STATE ST., # 420, SALEM, OR 97301** by personally serving a true copy of the **SUMMONS; COMPLAINT** upon **RYLYNN POOLE**, who is a clerk on duty in the office of the Registered Agent and who is authorized to accept service.

I declare under penalty of perjury that I am a resident of the State of Oregon. I am a competent person 18 years of age or older and not a party to or attorney in this proceeding and am authorized to serve the process described herein. I certify that the person, firm, or corporation served is the identical one named in this action. I am not a party to nor an officer, director, or employee of, nor attorney for any party, corporate or otherwise.

Subscribed and Sworn to before me on the 5th day of January, 2017 by the affiant who is personally known to me. In the County of


NOTARY PUBLIC-OREGON
Alice McAllister
Process Server

Barrister Support Service
11349 SW 60th Ave
Portland, OR 97219
(503) 246-8934

Our Job Serial Number: TSB-2016007927
Ref: 10284-0002



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